

CHAPTER 11
REMEDIAL OR INSURANCE CLAIMS

591—11.1(455G) Reserving and payment of claims.

11.1(1) *Reserving for remedial and retroactive claims under Iowa Code section 455G.9.*

a. All remedial and retroactive claims shall be reserved for their estimated exposure to the fund on the specific site. The reserve shall reflect the estimated exposure less copayment or deductible obligations. A separate reserve for upgrade benefits as provided for under 591—11.4(455G) shall be established.

b. Reserves shall reflect estimated total cost to the program, regardless of actual funding provided.

c. Prioritization pursuant to Iowa Code section 455G.12 shall be accomplished with rules if required and as determined by the board.

d. An incurred but not reported estimated reserve shall be developed for remedial claims anticipated, but not reported to the board.

e. Reserves may be changed to reflect changing knowledge on eligible claims.

11.1(2) *Reserving for financial responsibility claims under Iowa Code section 455G.11.*

a. All financial responsibility claims shall be reserved for 100 percent of estimated cost and will reflect severity of loss to environment and human health or property damage.

b. Expenses shall not be reserved. Expenses are any cost associated with the adjudication of the claim including administrative costs, attorney fees or any other cost associated with the handling of the claim. Cost of counsel used by an insured to assist with the claim or in litigation or in proving their loss to the board is neither expense nor corrective action.

c. A reserve for incurred but not reported claims will be developed.

11.1(3) *Payment of benefits under Iowa Code section 455G.9.*

a. The following underground storage tanks are not eligible for remedial account benefits:

(1) Tanks that were taken out of use prior to January 1, 1974. For purposes of this rule tanks taken out of use are tanks which have not actually been used by either depositing petroleum in the tank or by pumping petroleum from the tanks.

(2) Underground storage tanks which were removed from the ground prior to July 1, 1985.

(3) Underground storage tanks which were closed prior to July 1, 1985.

(4) Underground storage tanks which do not contain petroleum. For the purposes of this subrule petroleum means petroleum, including crude oil or any fraction of crude oil which is liquid at standard conditions of temperature and pressure (60°F and 14.7 pounds per square inch absolute). The following two categories of substances are not petroleum:

1. Substances which are regulated as hazardous waste under 42 U.S.C. 6921 et seq.

2. Substances which would be regulated under 42 U.S.C. 9601 et seq. if the substance were to leak from a tank, related piping, other part of the system or from spills or releases into the environment, including lands, waters and air.

b. To be eligible for benefits under Iowa Code sections 455G.9 and 455G.21, any owner or operator applying for such benefits shall demonstrate financial responsibility coverage using a method provided for under 567—Chapter 136 no later than October 26, 1990. If an owner or operator is unable to demonstrate financial responsibility coverage, or there is a lapse in the financial responsibility coverage for any period after October 26, 1990, the owner/operator will no longer be eligible for benefits if the site for which benefits are being requested has active tanks during the time the owner/operator was unable to demonstrate financial responsibility or if there is a lapse of financial responsibility coverage subject to the following limitations:

(1) The financial responsibility coverage requirement shall not be required on tanks which are temporarily closed consistent with 11.1(3)“o.”

(2) A lapse of financial responsibility coverage shall not cause loss of remedial benefits if the owner or operator can demonstrate:

1. Good-faith attempts were made to maintain the financial responsibility coverage;
2. Communications were ongoing between the owner or operator and the board in an attempt to maintain financial responsibility coverage at the time of the lapse;
3. The lapse in coverage was due to failure to timely submit proper documentation, failure to timely pay full payment of required premium, or both;
4. If the lapse was due to a failure to timely submit proper documentation:
 - The owner or operator is able to demonstrate that documentation was submitted in a good-faith attempt to comply with the financial responsibility criteria.
 - The owner or operator can provide factual support that the documentation submitted was sufficient to maintain financial responsibility coverage.
 - The owner or operator submits a signed affidavit certifying that the owner or operator believed the documentation submitted was sufficient to maintain financial responsibility coverage.
5. If the lapse was due to a failure to timely submit full payment of required premium:
 - The owner or operator is able to demonstrate that the payment was submitted in a good-faith attempt to comply with the financial responsibility criteria.
 - The owner or operator can provide factual support that the payment submitted was sufficient to maintain financial responsibility coverage.
 - The owner or operator submits a signed affidavit certifying that the owner or operator believed the payment submitted was sufficient to maintain financial responsibility coverage.
6. The owner or operator submits an amount equal to the full premium and any applicable surcharges that would have been required if financial responsibility coverage had been maintained.

The board will determine if the action taken by the owner or operator qualifies as good faith based upon the financial responsibility coverage requirements and the owner or operator's knowledge of an experience with financial responsibility coverage requirements and general business principles. When determining good faith, the board may consider the owner or operator's past history of maintaining financial responsibility coverage, the extent of the owner or operator's business knowledge taking into consideration business size and the number of UST sites owned or operated, compliance with other environmental programs, and other events occurring at the time of the financial responsibility coverage lapse which may have impacted the owner or operator's actions when attempting to maintain the financial responsibility coverage.

(3) An owner or operator who has had a lapse of financial responsibility coverage shall be allowed to remain eligible for remedial benefits if the following conditions are met:

1. The owner or operator applies for reinstatement of remedial benefits and submits a reinstatement fee equal to the full premium which would have been paid to maintain financial responsibility coverage plus an additional 10 percent. The reinstatement fee shall be prorated on a per-month basis for each month for which there was a lapse of financial responsibility coverage. There is a minimum reinstatement fee of \$500 per site per lapse of coverage.

2. At the time of the application for reinstatement of remedial benefits, all active tanks must be in compliance with all state and federal technical and financial responsibility requirements.

3. The owner or operator is in compliance with all other requirements of this rule.

4. An owner or operator is only eligible for reinstatement of remedial benefits one time per site. If there is another lapse of financial responsibility coverage on any active tank on site after remedial benefits have been reinstated, the owner or operator will lose eligibility for remedial benefits and will be subject to cost recovery pursuant to Iowa Code section 455G.13.

c. Impact of insurance on remedial account benefits. If owners or operators have insurance to cover corrective action costs for their underground storage tanks after January 1, 1985, other than pursuant to 455G.11 or other than pursuant to 40 CFR 280.95, 280.96, 280.99, 280.101, 280.102, and 280.103, the remedial account is only available to eligible owners and operators as follows:

(1) The remedial account will pay the deductible amount applicable to such insurance for owners and operators who are eligible for remedial account benefits, subject to the applicable remedial account deductible and copayment provisions.

(2) Except for payments made pursuant to 11.1(3) "c"(1) remedial account benefits are secondary to all such insurance.

(3) Remedial account benefits shall not be used to reimburse insurance companies for proceeds paid by those companies pursuant to the terms of such insurance.

(4) In the event of a dispute between the insurance company and the owner or operator or the board regarding insurance coverage, otherwise eligible owners and operators will receive remedial account benefits upon assigning their interest in such insurance to the board.

d. Claims which are filed with the board prior to January 31, 1990, or if filed by a city or county on or before September 1, 1990, for releases reported to the department after July 1, 1987, but prior to May 5, 1989; and claims filed with the board prior to September 1, 1990, for releases reported to the department after January 1, 1984, but prior to July 1, 1987, are retroactive claims which shall be eligible for reimbursement subject to the following guidelines:

(1) After a cutoff date has been passed.

(2) After priority payment procedures are established, if required.

(3) After the claim has been verified and all supporting materials have been supplied to the administrator for review.

(4) After a signed and notarized claim form has been received.

(5) Owners or operators whose method of showing proof of financial responsibility sufficient to comply with the federal Resource Conservation and Recovery Act or the Iowa environmental protection commission's underground storage tank financial responsibility rules, 567—Chapter 136, in which the ultimate financial responsibility for corrective action costs is not shifted from the owner or operator are self-insured for purposes of 455G.9(1) "a"(1)(a) and 455G.9(1) "a"(3)(b).

(6) A retroactive claim for a release for a small business shall be subject to the copayment requirements of Iowa Code section 455G.9(4). For all other retroactive claims, the program shall pay the lesser of \$50,000 or the total cost of corrective action for that release or total corrective action costs for that release as determined under 455G.9(4).